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Before the
Federal Communications Commission
Washington, D.C. 20554

APR 15 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Assessment and Collection
of Regulatory Fees for
Fiscal Year 1999

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MD Docket No. 98-200

To: The Commission

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**Comments of the
National Association of Broadcasters**

The National Association of Broadcasters ("NAB")¹ submits these comments on the Commission's *Notice of Proposed Rulemaking*. In the *Notice*, the Commission asks for comment on a proposed schedule of fees to raise the \$172,523,000 that Congress directed it to obtain from its regulatees.

As an initial matter, NAB supports the Commission's proposal to use a similar means of allocating fees among AM and FM stations to the one used for FY 1998, under which fees are set on a schedule varying both by station class and the population served by each station. There were fewer complaints about the method of calculating fees from radio stations in 1998 than had been the case in previous years. We believe that this was the result of the Commission's use of a fee assignment method which reflected differences between stations and which made clear the way in which the fee had been determined.

¹ NAB is a nonprofit, incorporated association of radio and television stations and broadcasting networks. NAB serves and represents the American broadcasting industry.

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Of course, no system is perfect, and there remain stations which are assessed larger fees than would be appropriate, most often where stations are located in suburban areas and place a signal over part of a larger urban center, even though they do not program to or receive advertising revenues based on those potential listeners. We urge the Commission to be open to requests for partial fee waivers from stations in those circumstances.²

While we generally applaud the way in which the Commission proposes to allocate fees between individual stations, we are concerned about the way in which the Commission proposes to assign revenue targets for each industry group. While Congress asked the Commission to raise 6 percent more in regulatory fees than in FY 1998, the Commission applied a 9.4 percent revenue requirement factor to the "Computed FY 1999 Revenue Requirement" to calculate the fee required from each category. *Notice*, Attachment C. Thus, for most payers, the increase in their fee will be much higher than the level of increase Congress set.

The only explanation that appears to have been provided for the discrepancy between the increase Congress mandated and the much larger increase in the actual fees is a footnote which states that "Congress' required revenue increase . . . will not fall equally on all payers because payment units have changed in several services." *Id.* at 6 n.18. The footnote indicates that an increase in payment units would accordingly result in a lower fee than would otherwise be required. Since the number of payment units in the broadcasting industry has *increased*, the Commission's reasoning would lead one to expect that individual fee levels for broadcasters

² Indeed, the Commission may be able to reduce the burden on its resources as well as the costs to radio stations by adopting a system where waivers could be issued effective for several years.

would go up less than the overall average, while in fact the opposite is true and the revenue demanded of broadcasters has increased far greater than the 6 percent Congress specified.

Indeed, while the Commission continues to state that fees are based on the detailed accounting system mandated by Section 9(i) of the Communications Act, 47 U.S.C. § 159(i),³ the explanation in the *Notice* of how the FY 1999 fees were calculated demonstrates that they had no basis in any examination of the costs the Commission currently incurs in regulating each service. As the *Notice* explains, fees were determined by estimating the number of FY 1999 payment units in each service, and then multiplying that number by the FY 1998 fee. The difference between that total, and the revenue requirement set by Congress was then “pro-rated . . . among all the existing fee categories.” *Notice* ¶ 9. In striking contrast to previous years, the Commission does not even attach calculations of the regulatory costs related to the various fee categories. *See FY 1998 Regulatory Fees*, MD Docket No. 98-36, Attachments D & E, 12 CR 392 (1998).

Thus, the Commission’s costs of regulating radio and television stations could have gone up or down, but the fees proposed in the *Notice* would not be affected. Indeed, if the number of payment units in several fee categories declined, the result was an increase in the fees paid by regulatees in every other fee category since the resulting revenue shortfall was simply pro-rated across all services. Although Congress did not mandate that fees be based on a precise calculation of the costs of regulation and the benefits to regulatees, it equally did not contemplate that

³ “This methodology, which we continued to utilize for FY 1998, enabled us to develop regulatory fees which we believed to be more reflective of our costs of regulation, and allowed us to make revisions to our fees based on the fullest extent possible, and consistent with the public interest, on the actual costs of regulating those services subject to a fee.” *Notice* ¶ 7.

the Commission would allocate fees with no consideration other than raising specified revenue targets.

If the number of payment units in certain fee categories decreased, it is logical to assume that the Commission's costs of regulating the remaining fee payers declined, and it may be that the increase in the Commission's budget reflects greater costs in regulating other types of fee payers. If that is the case, the fees in those categories should reflect those changes. The Commission must, before assessing fees, explain why the average fee level proposed in the *Notice* includes an increase of more than one and one half times the overall increase in regulatory fee totals, and the Commission must not simply place the burden of increased revenue targets equally on all regulatees as proposed in the *Notice*.⁴

We have three final observations. Once again, the combination of the regulatory fees proposed to be collected in FY 1999 and the anticipated amounts of fees to be collected under Section 8 of the Act, 47 U.S.C. § 158, appears to be greater than the Commission's total budget. It is highly improper for fee programs that were designed to recover the government's costs of regulation to become hidden taxes resulting in net additional revenues for the Treasury. The Commission should work to ensure that the fees it charges do not exceed its actual expenses.

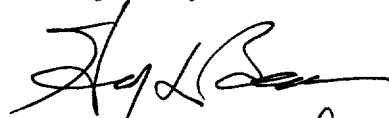
In that context, the Commission has begun a process of streamlining its application processes in all areas. As applications are filed electronically, and the Commission reduces the amount of information that must be submitted and reviewed by its staff, the resulting efficiencies

⁴ If, on the other hand, the fees proposed in the *Notice* actually represent the costs of regulation for category of fee payers, then it is incumbent on the Commission to explain its reasoning and provide documentation supporting its conclusions.

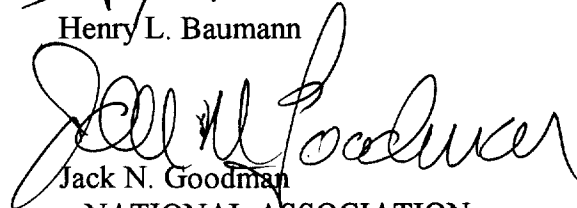
should be reflected in reduced application and regulatory fees. *See* Comments of the National Association of Broadcasters, MM Docket No. 98-43 (June 16, 1998) at 7-8.

Finally, the steady increase in the amount of regulatory fees is disturbing, particularly since many regulatees may not perceive any additional benefits that are obtained through these increased payments. If, as proposed in the Commission's FY 2000 budget, its regulatees are to be expected to pay the increased costs occasioned by the Commission's move to the Portals, the Commission must ensure that its costs are kept at a minimum and that regulatees are not expected to pay fees for services to other industries or which provide no regulatory benefits to them.

Respectfully submitted,



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